



PUBLIC NOTICE

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**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON
IMPLEMENTATION OF REQUIREMENT TO DEFINE PROGRAMS FOR DISTRIBUTION
OF SPECIALIZED CUSTOMER PREMISES EQUIPMENT USED BY INDIVIDUALS WHO
ARE DEAF-BLIND**

Pleading Cycle Established

CG Docket No. 10-210

Comment Date: November 17, 2010
Reply Comment Date: November 23, 2010

I. Introduction

The Twenty-First Century Communications and Video Accessibility Act of 2010 (Accessibility Act), which was signed into law by President Obama on October 8, 2010, requires the Commission to take various measures to ensure that people with disabilities have access to emerging communications technologies in the 21st Century.¹ Section 105 of this law directs the Commission to establish rules that define as eligible for relay service support those programs approved by the Commission for the distribution of specialized customer premises equipment (specialized CPE) designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low income individuals who are deaf-blind.²

¹ Pub. L. 111-260. Pursuant to the Accessibility Act, the Commission must establish rules defining programs for the distribution of specialized customer premises equipment that are eligible for relay service support within six months after enactment of the Act.

² *Id.* at § 105, to be codified at 47 U.S.C. § 719. The term specialized customer premises equipment is defined in the Commission's rules governing Section 255 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (Communications Act) as "customer premise equipment which is commonly used by individuals with disabilities to achieve access." 47 C.F.R. § 7.3(j). "Customer premises equipment" is defined in the Communications Act as "equipment employed on the premises of a person (other than a carrier) to originate, route or terminate telecommunications." 47 U.S.C. § 153(14). *See also* 47 C.F.R. §64.607(a) (offering examples of specialized CPE); *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6435, paras. 34-36 (1999) (providing further guidance on this definition).

In this Public Notice, we seek comment on a range of issues related to the Commission's implementation of the requirement for a National Deaf-Blind Equipment Distribution Program (NDBEDP) as set forth in Section 105 of the Accessibility Act. The comments filed in response to this Public Notice will inform the Commission's preparation of a Notice of Proposed Rulemaking proposing rules that create an effective and efficient process governing the distribution of specialized CPE to enhance and promote access to telecommunications and related communications services by low-income individuals who are deaf-blind.

II. Eligibility

1. *Individuals who are Deaf-Blind.* The Accessibility Act defines as eligible for the receipt of specialized CPE low income persons who can meet the definition of "individuals who are deaf-blind," contained in the Helen Keller National Center Act (HKNC Act).³ The HKNC Act includes within this definition, persons:

- (1) who have a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both these conditions;
- (2) who have a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and
- (3) for whom the combination of impairments described in clauses (i) and (ii) cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation.

The HKNC Act further provides that where individuals "cannot be measured accurately for hearing and vision loss because of cognitive and/or behavioral constraints, they may still be considered deaf-blind if, though functional, they are considered either by themselves or others to be both deaf and blind." We seek general comment on how this definition has been construed in other contexts, and in particular whether there is a discernable range of individuals who fall within this definition. Specifically, we understand that individuals who are considered to be deaf-blind may have varying degrees of hearing loss and/or vision loss and we ask commenters to discuss where along this spectrum of individuals the above definition falls. For example, is this definition only intended to capture those with more severe hearing and vision disabilities?⁴ Is this definition flexible enough to allow the Commission to further refine the category of individuals who qualify as deaf-blind under the NDBEDP? We further seek comment on how best to determine the eligibility of potential program applicants using this definition. For example, to what extent should verification from a physician, audiologist, vocational rehabilitation counselor, or medical, educational or employment professional be required to confirm eligibility?

2. *Low Income Limitation.* Section 105 limits eligibility in the NDBEDP to individuals who have low incomes, but does not contain further guidance on this qualification. The Commission's rules define "qualifying low-income consumer" in the universal service context for purposes of determining eligibility for the Lifeline and Link Up programs as income at or below 135 percent of the federal poverty guidelines, or participation in various income-based public assistance programs, such as Medicaid, Food Stamps, Federal Public Housing Assistance, Temporary Assistance to Needy Families (TANF) and the

³ See Pub. L. 111-260, Sec. 105, citing the Rehabilitation Act Amendments of 1992 (29 U.S.C. § 1905(2)).

⁴ In this regard, we note the restriction to persons having hearing losses so severe that they are unable to understand speech even with optimal amplification. In the context of the NDBEDP, should this be interpreted to mean amplification over a telephone or in person?

National School Lunch's free lunch program.⁵ We seek feedback on the appropriateness of using this definition of "qualifying low-income consumer" to identify individuals with low incomes for purposes of implementing the NDBEDP. We also seek comment on whether income is the only factor that should be considered. For example, to the extent that individuals who are deaf-blind incur high personal expenses, for assistance with daily routine tasks beyond those that a person without this disability might incur, should those expenses be taken into account in determining program eligibility? If so, how should this determination be made? To what extent should applicants be required to submit financial documentation to support assertions about their income? We also ask whether there should be certification or other requirements imposed on applicants to qualify for equipment distributed under the NDBEDP.

III. Scope: Covered Equipment

Section 105 authorizes the distribution of specialized CPE needed to make telecommunications services,⁶ Internet access service,⁷ and advanced communications,⁸ including interexchange services⁹ and advanced telecommunications and information services¹⁰ accessible to people who are deaf-blind.

⁵ See 47 C.F.R. § 54.400(a). See also 47 C.F.R. §54.409(b), (c); *Lifeline and Link Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8312, para. 13 (2004). We note that earlier this year, the Commission released an order referring to the Federal-State Joint Board on Universal Service questions regarding eligibility rules for the universal service low-income programs. See *Federal-State Joint Board on Universal Service; Lifeline and Link Up*, Order, 25 FCC Rcd 5079 (2010) (*Referral Order*). Among other things, the *Referral Order* asked that the Joint Board recommend any changes to the Lifeline and Link Up eligibility rules that may be necessary given the significant technological and marketplace changes since the current rules were adopted. One of the factors that the Joint Board was asked to consider was the combination of federal and state rules that govern which customers are eligible to receive assistance through the two programs.

⁶ These are defined in the Communications Act as the offering of telecommunications for a fee directly to the public, or to such classes of users as to effectively available directly to the public, regardless of the facilities used. 47 U.S.C. §152 (46). "Telecommunications" is further defined as the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. *Id.*

⁷ The "Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act) defines "Internet access service" as "a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers." 47 U.S.C. § 231(e)(4). Though the CAN-SPAM Act defines this term in the context of prohibiting the sending of mobile service commercial messages without a recipient's express prior authorization, we seek comment on whether this definition of "Internet access service" is also appropriate for the NDBEDP.

⁸ The Accessibility Act defines "advanced communications" to include "interconnected VoIP service," defined in 47 C.F.R. § 9.3 (See Pub. L. 111-260, Sec. 101, to be codified at §153(57); "non-interconnected VoIP service," defined as a service that (i) enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol and (ii) requires Internet protocol compatible customer premises equipment (and does not include any service that is an interconnected VoIP service) Pub. L. 111-260, Sec. 101, to be codified at 47 U.S.C. § 153(58); "electronic messaging service," defined as a service that provides real-time or near real-time non-voice messages in text from between individuals over communication networks, Pub. L. 111-260, Sec. 101, to be codified at 47 U.S.C. § 153(56); and "interoperable video conferencing service," defined as a service that "provides real-time video communications, including audio, to enable users to share information of the user's choosing." Pub. L. 111-260, Sec. 101, to be codified at 47 U.S.C. § 153(59).

⁹ Interexchange services are generally services between local exchanges in different geographic areas (local access and transport areas, otherwise known as LATAs). Traditionally, these have been commonly called long-distance services. See *Union Telephone Co. v. Qwest Corp.*, 2004 WL 4960741 (D.Wyo. Sep 03, 2004) (NO. 02-CV-209-D)(2004) at 2 ("Long distance" (also known as "toll" or "interexchange") service refers to service offered to subscribers that permits them to place (or originate) calls that terminate outside of their local calling area).

We seek comment on the types of specialized CPE that are needed to access each of the above categories of communications services. To what extent does such specialized CPE already exist for people who are deaf-blind? How easy is it for a person who is deaf-blind to acquire such equipment? Where can such equipment be purchased or acquired? For example, is such equipment available in retail establishments or must it be special ordered at specific outlets? What are the general costs associated with such equipment, including its acquisition, maintenance and repair?¹¹ If such equipment is not yet fully accessible to people who are deaf-blind, what additional research and development is needed to enable such equipment to meet the needs of this population? Does the Commission have the authority to fund the development of specialized CPE uniquely suited to this population, and if so, should the Commission consider making such funding available under the NDBEDP? Are there any software or third party applications that can achieve communications accessibility for this population? If so, what are its costs and availability?

Often equipment that is specifically designed to meet the communication needs of people with disabilities is used as an adjunct to technologies that are available to the general population. To what extent should equipment distributed under the NDBEDP include the mainstream equipment that is needed for use with specialized CPE? For example, if specialized CPE such as a refreshable Braille display is only usable with a computer (which would generally be considered non-specialized CPE because it can be used for other purposes), should the NDBEDP also pay for the computer? Similarly, because many assistive devices used to address the access needs of people with disabilities are external to equipment used by the general public, there is an ongoing need to ensure that such specialized equipment is both compatible and interoperable with ever-evolving mainstream communications equipment. This sometimes requires software and firmware updates and other forms of coordination to ensure that equipment given out to consumers does not become outdated as technologies continue to advance. Can and should the cost of on-going maintenance of such software/firmware be included under this national distribution program? We also seek comment as to whether there are additional barriers that are unique to people who are deaf-blind relating to web content, equipment, services, networks, and software, and the extent to which equipment that might help a person address these barriers should be covered under Section 105.

Next, we seek information on whether to take into account the projected lifespan of the specialized CPE utilized by the deaf-blind community and the basis for such projections. Where the projected useful life of equipment is limited – both in terms of usability and its technological relevance – should the NDBEDP include provisions for equipment upgrades? If so, how should these determinations be made? In a similar vein, how often should any one applicant be eligible for new or upgraded equipment, i.e., should a specific time period, or some other criteria (such as the projected lifespan of a device) determine when an individual becomes eligible for a new piece of equipment?

The Commission is also required to ensure that its regulations addressing access by people with disabilities encourage the use of existing technology, and “not discourage or impair the development of improved technology.”¹² We ask commenters to discuss what measures and incentives should be

¹⁰ “Information service” is defined as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. 47 U.S.C. § 153 (20).

¹¹ Costs for assistive technologies used by people who are deaf-blind are reported to range between \$5,000 and \$10,000. See generally http://www.humanware.com/en-usa/support/deafblind_communicator (visited October 28, 2010). We seek comment on the accuracy of these cost estimates.

¹² 47 U.S.C. § 225(d)(2).

considered to address this concern. Would adding a research and development component to the NDBEDP ensure that equipment for people who are deaf-blind utilizes the most current communications technologies? How would such a component be integrated into the NDBEDP framework? We further seek comment on the extent to which these efforts should focus on the development of assistive technologies that are specifically intended only for the deaf-blind population versus universal design efforts to ensure that mainstream communication devices developed for the general population are made accessible to people who are deaf-blind .

IV. State Program Options

There are an estimated 45 state equipment distribution programs (EDPs) that currently distribute specialized CPE to their in-state residents with disabilities.¹³ Such programs vary considerably in their approaches based on: (1) program eligibility criteria; (2) types of assistance provided (e.g., equipment loans, subsidy towards purchase of equipment, end user ownership of equipment, equipment update/replacement options); (3) how assistance is given to the person (e.g., coupons, vouchers, cost-share); (4) level of training provided (both pre- and post-distribution of equipment); (5) level of maintenance, software/firmware upgrades, and repair provided; and (6) type(s) of equipment offered. We seek to gain a better understanding of the current landscape of these equipment distribution programs. To this end, we ask commenters to discuss the effectiveness of these programs, including the benefits and disadvantages of the various approaches taken by the states, both from the EDP administrator perspective and the consumer perspective. We are particularly interested in data and information about the number of deaf-blind persons who participate in these individual programs¹⁴ and the types of equipment currently distributed that are intended to meet the unique needs of the deaf-blind community. We invite individual states and other commenters to discuss the extent to which their state EDPs have been successful in providing accessible technologies to this segment of their population. Additionally, we are interested in gaining input from stakeholders on best practices based on experiences with these programs to date.

Against this backdrop, we seek comment on whether current state EDPs should become the primary means of distributing equipment under the NDBEDP. If the state EDPs do become the primary equipment distribution points, should there be a default Federal EDP option or regional option to cover those states which do not have an existing EDP? If so, what should be the framework for such option(s)? Alternatively, should the Commission be considering other state programs, such as state assistive technology programs or vocational rehabilitation programs, as potential specialized CPE distribution points? In addition, given the unique needs of the deaf-blind community, should the Commission require such state programs to be partnered with a private or public entity that has specific expertise in deaf-blindness? For example, might such entity provide ongoing guidance to the Commission on the types of specialized CPE that should be eligible under the NDBEDP, the extent to which screening and training is needed with such distribution efforts, as well as gaps in equipment that might warrant additional research and development?

Because the Accessibility Act mandates that programs approved under section 105 be eligible for relay service support, we seek comment generally on how to pay for the distribution of specialized CPE for this program within the current telecommunications relay service (TRS) Fund structure. With respect to the disbursement of funds under the NDBEDP, what should be the role of the TRS Fund administrator? For example, should the TRS Fund administrator be responsible for assessing and

¹³ See <http://www.tedpa.org/>, the official website for the Telecommunications Equipment Distribution Program Association (TEDPA), an organization of state administrators responsible for these state equipment distribution programs.

¹⁴ Given that the NDBEDP has an annual funding source, we are particularly interested in the number of persons who are deaf-blind who have received specialized CPE from each state EDP *on an annual basis*.

proposing appropriate compensation to state and/or Federal EDP programs? In the alternative, should the TRS Fund administrator's role be limited to compensating qualifying programs as directed by the Commission? In addition, what type of cost data should be submitted to the Fund Administrator in order to receive compensation under this program? Finally, how frequently should such cost data be provided to the TRS Fund Administrator and how often should funding to qualifying programs be disbursed?

V. Logistics and Criteria for Funding Support

Section 105 of the Accessibility Act requires that the Commission establish rules defining eligibility for programs wishing to receive funding under the NDBEDP. To the extent that the Commission decides to rely on state programs as the primary source for the distribution of specialized CPE, we seek comment on an appropriate approval process and eligibility requirements that should be put in place.

We note that under the Universal Service program, the Commission allows states with their own low-income support programs to establish criteria for consumer eligibility, certification needed to be deemed eligible,¹⁵ and carrier verification of continued consumer eligibility,¹⁶ that apply to both the state and federal support programs. In states that do not maintain their own low-income support programs, consumers must comply with the eligibility criteria specified in the Commission's rules to qualify for support. We seek comment as to whether a similar approach would be appropriate for the implementation of Section 105, should the Commission decide that state programs will become a part of this national program. Specifically, should the Commission establish a framework under which minimum requirements must be met by each state program in order to qualify to distribute specialized CPE? If so, what should those requirements be? For instance, should the Commission set a federal low-income threshold or should this be determined on a state-by-state basis? Similarly, should the Commission require that certain types of equipment be included as part of the potential offerings to persons who are deaf-blind? Along these lines, to what extent should participating state programs be given leeway in determining the equipment they wish to distribute? Should equipment distributed through such state programs be required to receive approval for inclusion in the NDBEDP? If so, what approval mechanisms and criteria would be appropriate?

We also seek comment on whether any participating state program should require that an independent "screening" or "assessment" be done before equipment is distributed to an individual, in order to determine the most appropriate specialized CPE to meet the needs of that person. If so, how should such screening/assessment be done in a manner that is effective, efficient, and protective of an individual's privacy? Additionally, to what extent should funding be available under this national program for such screening and assessments? Similarly to what extent should the NDBEDP seek to assess the training needs of individuals receiving equipment to ensure that equipment recipients fully understand how to use their equipment? Should the cost of such training, including training materials, be covered under the NDBEDP? Most importantly, would funding for such training under this national program be within the scope of the Commission's authority?

We also seek comment on what technical or other support (e.g., maintenance, software/firmware updates, and repair) should be provided once equipment is distributed and for what duration of time such support should be available.¹⁷ If maintenance, upgrades, and repairs are included in

¹⁵ 47 C.F.R. § 54.409.

¹⁶ 47 C.F.R. § 54.410.

¹⁷ Conversely, to what extent should an equipment recipient be responsible for replacing broken equipment where such breakage was the fault of that individual?

the reimbursable costs, should this be limited by the term of the equipment's warranty or expected life, or should these be covered without limitation for the duration of the equipment's possession? Similarly, should there be a limit on the number of items any individual or household receives through the EDP? Should there be a limit on the cost of any single item provided through the EDP? If so, what criteria should be used in setting such limitations?

Finally, given that numerous state EDPs already distribute equipment to their residents who are deaf-blind, to what extent should the NDBEDP serve as a supplement to or a replacement for those efforts? For example, should there be a cost-sharing arrangement, in which the NDBEDP funds up to a certain percentage of equipment and related costs? Should there be a cap on the amount of funding that could be allocated to individuals in any one state?

VI. Oversight and Reporting

We seek comment on the most appropriate way to ensure that the distribution of funds under the NDBEDP is achieved in a manner that both gives full effect and meaning to the purposes of the Accessibility Act, is effective and efficient in its compensation to qualifying programs, and protects against waste, fraud, and abuse. In this regard, we seek comment on what recordkeeping and reporting the Commission should require for distribution programs implemented under the NDBEDP. In particular, what records should be retained and for what duration? Additionally, what data should reports include, and how often should they be required? In addition, should the Commission require that audits be performed on participating programs? If so, how and under what circumstances? We also seek general comment on any other safeguards that the Commission should consider in an effort to promote and effectuate effective oversight of the NDBEDP, and any participating state EDPs, and to protect against instances of waste, fraud and abuse.

All comments should refer to **CG Docket No. 10-210**. Please title comments responsive to this Notice as "PN Comments – Specialized CPE Distribution Program." Further, we strongly encourage parties to develop responses to this Notice that adhere to the organization and structure of the questions in this Notice.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1205(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.¹⁸ Comments can be filed through the Commission's ECFS filing interface located at the following Internet address: <http://www.fcc.gov/cgb/ecfs/>. Comments can also be filed via the Federal eRulemaking Portal: <http://www.regulations.gov>.¹⁹ Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties who choose to file by paper must file an original and four copies of each filing.

¹⁸ See Electronic filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

¹⁹ Persons using this method to submit comments should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street S.W., Room TW-A325, Washington, D.C. 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

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For further about this Public Notice, please contact D'wana Terry, 202-418-0643 (voice) or Pam Gregory, 202-418-1169 (TTY), Consumer and Governmental Affairs Bureau, Federal Communications Commission.

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